



# AIA<sup>®</sup> Document B101<sup>®</sup> – 2017

## Standard Form of Agreement Between Owner and Architect

**AGREEMENT** made as of the \_\_\_\_ day of \_\_\_\_\_ in the year Two Thousand Twenty-Four  
(In words, indicate day, month and year.)

**BETWEEN** the Architect's client identified as the Owner:  
(Name, legal status, address and other information)

Wellmont Health System  
d/b/a Lonesome Pine Hospital  
1990 Holton Avenue E.  
Big Stone Gap, VA 24219

and the Architect:  
(Name, legal status, address and other information)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

for the following Project:  
(Name, location and detailed description)

Lonesome Pine Hospital Outpatient Center  
1990 Holton Avenue E.  
Big Stone Gap, VA 24219

Design and construction administration of interior renovations for new outpatient center, including Physical Therapy, Primary Care, Spine & Rehab and Sport Medicine, with all required support spaces.

The Owner and Architect agree as follows.

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

*(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")*

§ 1.1.1 The Owner's program for the Project:

*(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)*

§ 1.1.2 The Project's physical characteristics:

*(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)*

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

*(Provide total and, if known, a line item breakdown.)*

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

\_\_\_\_\_

**.2** Construction commencement date:

\_\_\_\_\_

**.3** Substantial Completion date or dates:

\_\_\_\_\_

**.4** Other milestone dates:

**§ 1.1.5** The Owner intends the following procurement and delivery method for the Project:  
*(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)*

**§ 1.1.6** The Owner's anticipated Sustainable Objective for the Project:  
*(Identify and describe the Owner's Sustainable Objective for the Project, if any.)*

**§ 1.1.6.1** Intentionally omitted.

**§ 1.1.7** The Owner identifies the following representative in accordance with Section 5.3:  
*(List name, address, and other contact information.)*

Brent Fugate  
Ballad Health  
108 Woodlawn Dr.  
Johnson City, TN 37604  
Phone: (423) 431-7782  
Email: Brent.Fugate@Balladhealth.org

**§ 1.1.8** The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:  
*(List name, address, and other contact information.)*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

**§ 1.1.9** The Owner shall retain the following consultants and contractors:  
*(List name, legal status, address, and other contact information.)*

**.1** Geotechnical Engineer:

\_\_\_\_\_

**.2** Civil Engineer:

\_\_\_\_\_  
3 Other, if any:  
(List any other consultants and contractors retained by the Owner.)  
\_\_\_\_\_

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:  
(List name, address, and other contact information.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:  
(List name, legal status, address, and other contact information.)

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Structural Engineer:

\_\_\_\_\_

.2 Mechanical Engineer:

\_\_\_\_\_

.3 Electrical Engineer:

\_\_\_\_\_

§ 1.1.11.2 Consultants retained under Additional Services:

§ 1.1.12 Other Initial Information on which the Agreement is based:

§ 1.2 The Owner and Architect may reasonably rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, if there are material changes in the Initial Information.

§ 1.3 The parties may agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

§ 1.3.1 Intentionally omitted.

## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed or registered in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed or registered design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects and other applicable design professionals practicing in the same or similar locality under the same or similar circumstances, and who have experience on projects of a similar size, nature, schedule and budget. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project, and in accordance with the schedule approved by the Owner pursuant to Section 3.1.3.

§ 2.2.1 The Architect shall be responsible for the acts and omissions of its agents, employees and consultants, and all other persons and entities providing services to the Project through or on behalf of the Architect, and all other persons and entities for which the Architect is responsible (collectively, the "Architect Parties").

§ 2.2.2 The Architect, the Architect Parties, their services and the Construction Documents shall comply with all applicable laws, statutes, codes, ordinances, rules, regulations, and lawful orders and requirements of public authorities, including those that relate to hazardous materials, accessibility for the physically challenged (including the Americans with Disabilities Act), privacy and protection of confidential information (collectively, "Laws").

§ 2.3 The Architect's representative identified in Section 1.1.10 is authorized to act on behalf of the Architect with respect to the Project. The Architect's representative shall not change unless approved by the Owner in writing.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project. The Architect shall not remove or replace any consultant or key personnel working on the Project, or assign them to other projects in a manner that adversely affects their ability to perform their duties on the Project, unless and until the Owner has approved such removal, replacement or assignment in writing. In the event any of the Architect Parties fails to properly perform or otherwise hinders or adversely affects the Project's progress, the Architect shall replace such person or entity as reasonably requested by the Owner in writing.

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.5.1 Commercial General Liability with policy limits of not less than One Million Dollars (\$1,000,000) for each occurrence and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million Dollars (\$1,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than Five Hundred Thousand (\$500,000) each accident, Five Hundred Thousand (\$500,000) each employee, and Five Hundred Thousand (\$500,000) policy limit.

§ 2.5.6 Professional Liability covering the Architect's negligent acts, errors and omissions in the performance of professional services with policy limits of not less than \_\_\_\_\_ Million Dollars (\$\_\_\_\_,000,000) per claim and \_\_\_\_\_ Million Dollars (\$\_\_\_\_,000,000) in the aggregate. If such insurance is written on a claims-made basis, the Architect shall maintain such insurance for at least five years after Substantial Completion of the Project and shall furnish the Owner with satisfactory evidence of such continuation of coverage prior to final payment and every year thereafter for five years.

**§ 2.5.7 Additional Insured Obligations.** To the fullest extent permitted by Laws, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner, Mountain States Health Alliance and Ballad Health's additional insureds for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the additional insureds' insurance policies and shall apply to both ongoing and completed operations.

**§ 2.5.8** The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

**§ 2.5.9** All services of the Architect's consultants shall be provided pursuant to written agreements with the Architect that specifically bind such consultants to the terms of this Agreement. Such agreements shall require the consultants to carry and maintain insurance coverage similar to the coverage described in this Section 2.5, with reasonably prudent limits and coverages in light of the services to be rendered. The Architect shall furnish the Owner with copies of such agreements at the Owner's request.

**§ 2.6** To the full extent permitted by Laws, the Architect shall defend, indemnify and hold harmless the Owner, Mountain States Health Alliance and Ballad Health, and each of their officers and employees from and against claims, damages, losses, liabilities, expenses and judgments arising out of, related to or in connection with the Architect's services under this Agreement, including reasonable attorneys' fees and expenses incurred in defending those claims, but only to the extent caused by the negligent acts or omissions of the Architect or any of the Architect Parties.

### **ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES**

**§ 3.1** The Architect's Basic Services consist of those described in this Articles 1, 2, 3 and elsewhere in this Agreement as Basic Services, and include usual and customary structural, mechanical, plumbing and electrical engineering services. Services not identified in this Agreement are Additional Services.

**§ 3.1.1** The Architect shall manage the Architect's services and the services of the Architect Parties, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

**§ 3.1.2** The Architect shall coordinate its services, and the services of the Architect Parties, with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to reasonably rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

**§ 3.1.3** As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

**§ 3.1.4** The Architect shall not be responsible for an Owner's written directive or substitution, or for the Owner's written acceptance of non-conforming Work, made or given without the Architect's written approval.

**§ 3.1.5** The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to and comply with all applicable design requirements imposed by those authorities and entities.

**§ 3.1.6** The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project, shall prepare submittal

documents and drawings required by the approval process of such authorities, and shall make such supplementary or clarifying submittals as required for the Owner to obtain final approvals and authorizations from such authorities.

**§ 3.1.7** The Owner's written approval of the Schematic Design Documents, Design Development Documents, Construction Documents, any estimate of the Cost of the Work, or any other item or service provided by the Architect does not relieve or release the Architect of its obligations or duties, or waive any of the Owner's rights, under or arising out of this Agreement.

### **§ 3.2 Schematic Design Phase Services**

**§ 3.2.1** The Architect shall review the program and other information furnished by the Owner, and shall review and comply with Laws applicable to the Architect's services.

**§ 3.2.2** The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies or errors discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

**§ 3.2.3** The Architect shall present its preliminary evaluation to the Owner and shall advise and consult with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

**§ 3.2.4** Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

**§ 3.2.5** Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

**§ 3.2.5.1** The Architect shall advise and consult with the Owner regarding sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

**§ 3.2.5.2** The Architect shall advise and consult with the Owner regarding the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

**§ 3.2.6** The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

**§ 3.2.7** The Architect shall submit the Schematic Design Documents to the Owner, take any action required under Section 6.5, and request the Owner's approval.

### **§ 3.3 Design Development Phase Services**

**§ 3.3.1** Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical, plumbing and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

**§ 3.3.2** The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

**§ 3.3.3** The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

#### **§ 3.4 Construction Documents Phase Services**

**§ 3.4.1** Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

**§ 3.4.2** The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

**§ 3.4.3** During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms. The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

**§ 3.4.4** The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

**§ 3.4.5** The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Sections 6.5 and 6.6, and request the Owner's approval.

#### **§ 3.5 Procurement Phase Services**

##### **§ 3.5.1 General**

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding contracts for construction.

##### **§ 3.5.2 Competitive Bidding**

**§ 3.5.2.1** Bidding Documents, if applicable, shall consist of bidding requirements and proposed Contract Documents.

**§ 3.5.2.2** The Architect shall assist the Owner in bidding the Project by:

- .1 facilitating the distribution of Bidding Documents to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- .4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

**§ 3.5.2.3** If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

##### **§ 3.5.3 Negotiated Proposals**

**§ 3.5.3.1** Proposal Documents, if applicable, shall consist of proposal requirements and proposed Contract Documents.

**§ 3.5.3.2** The Architect shall assist the Owner in obtaining proposals by:



- .1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- .4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

## § 3.6 Construction Phase Services

### § 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents; provided however, the Architect shall comply with its obligations to observe the Work and report to the Owner known deviations from the Contract Documents and from the most recent approved construction schedule, and defects and deficiencies observed in the Work. The Architect shall be responsible for the Architect's and Architect Parties' negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2.1 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

### § 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, to endeavor to protect the Owner against defects and deficiencies in the Work and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, and as otherwise known to the Architect, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. The Architect shall advise and obtain the consent of the Owner prior to rejecting any Work and prior to requiring any inspection or testing of the Work.

§ 3.6.2.3 The Architect shall interpret and advise the Owner or Contractor, as applicable, about matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or

Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

**§ 3.6.2.4** Interpretations of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. The Architect's interpretations on matters relating to aesthetic effect shall be final if consistent with the Owner's approvals and the intent expressed in the Contract Documents.

**§ 3.6.2.5** Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

### **§ 3.6.3 Certificates for Payment to Contractor**

**§ 3.6.3.1** The Architect shall review and certify the amounts due the Contractor and shall timely issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

**§ 3.6.3.2** The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**§ 3.6.3.3** The Architect shall maintain a record of the Applications and Certificates for Payment.

### **§ 3.6.4 Submittals**

**§ 3.6.4.1** The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

**§ 3.6.4.2** The Architect shall review and approve, or take other appropriate timely action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 3.6.4.3** If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify, and be responsible for the adequacy of, the appropriate performance and design criteria that such services must satisfy, and shall include in the Construction Documents a list of any such professional design services and certifications that are required. The Architect shall timely review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract

Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

**§ 3.6.4.4** Subject to Section 4.2.1, the Architect shall timely review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

**§ 3.6.4.5** The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

### **§ 3.6.5 Changes in the Work**

**§ 3.6.5.1** The Architect may, after consulting with the Owner, order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. If requested by the Owner, the Architect shall timely prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. Each Change Order and Construction Change Directive shall clearly define the change in the Work and be accompanied by sufficient documentation to support any adjustments in the Contract Sum or Contract Time.

**§ 3.6.5.2** The Architect shall maintain records relative to changes in the Work.

### **§ 3.6.6 Project Completion**

**§ 3.6.6.1** The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties, guarantees, manuals and related documents required by the Contract Documents and received from the Contractor; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

**§ 3.6.6.2** The Architect's inspections shall be conducted with the Owner (at the Owner's discretion) to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected. The Architect shall notify the Owner in advance of all such inspections, and the Owner or its designated representative shall have the right to participate in such inspections.

**§ 3.6.6.3** When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

**§ 3.6.6.4** The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

**§ 3.6.6.5** Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

## ARTICLE 4 ADDITIONAL SERVICES

### § 4.1 Additional Services

§ 4.1.1 The services listed below are included in Basic Services if identified as the Architect's responsibility. The Architect shall provide such services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as part of the Architect's Basic Services. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Additional Service is not being provided for the Project.

*(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)*

Additional Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.1 Programming	
§ 4.1.1.2 Multiple preliminary designs	
§ 4.1.1.3 Measured drawings	
§ 4.1.1.4 Existing facilities surveys	
§ 4.1.1.5 Site evaluation and planning	
§ 4.1.1.6 Building Information Model management responsibilities	
§ 4.1.1.7 Development of Building Information Models for post construction use	
§ 4.1.1.8 Civil engineering	
§ 4.1.1.9 Landscape design	
§ 4.1.1.10 Architectural interior design	
§ 4.1.1.11 Value analysis	
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	
§ 4.1.1.13 On-site project representation	
§ 4.1.1.14 Conformed documents for construction	
§ 4.1.1.15 As-designed record drawings	
§ 4.1.1.16 As-constructed record drawings	
§ 4.1.1.17 Post-occupancy evaluation	
§ 4.1.1.18 Facility support services	
§ 4.1.1.19 Tenant-related services	
§ 4.1.1.20 Architect's coordination of the Owner's consultants	
§ 4.1.1.21 Telecommunications/data design	
§ 4.1.1.22 Security evaluation and planning	
§ 4.1.1.23 Commissioning	
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	
§ 4.1.1.25 Fast-track design services	
§ 4.1.1.26 Multiple bid packages	
§ 4.1.1.27 Historic preservation	
§ 4.1.1.28 Furniture, furnishings, and equipment design	
§ 4.1.1.29 Other services provided by specialty Consultants	

Additional Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.30 Other Supplemental Services	

§ 4.1.2 Notwithstanding any of the provisions of this Agreement, the Architect shall not be entitled to compensation or an extension of time for any services required due to the negligence or breach of contract of the Architect or any of the Architect Parties.

(Paragraphs deleted)

#### § 4.2 Architect's Additional Services

(Paragraph deleted)

§ 4.2.1 Prior to providing any services the Architect believes are Additional Services, the Architect shall notify the Owner

(Paragraphs deleted)

of such belief in writing and provide a proposed schedule for, and an estimate of, or proposal for, the additional fees and expenses to be incurred as a result of, such services. After receipt of such notice and information, if the Owner authorizes such services as Additional Services in writing, the Architect shall provide such Additional Services in accordance with the terms and conditions of such authorization and this Agreement. Except for services required due to the negligence or breach of contract of the Architect or any of the Architect Parties, any Additional Services authorized in writing and provided in accordance with this Section 4.2.1 shall entitle the Architect to compensation pursuant to Section 11.3, or as otherwise agreed in writing, and any agreed adjustment in the Architect's schedule. The Owner shall have no obligation to pay additional compensation or expenses associated with any such services unless such services are authorized by the Owner in writing pursuant to this Section 4.2.1.

§ 4.2.2 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services, subject to Section 4.2.1. When the limits below are reached, the Architect shall notify the Owner:

.1 \_\_\_\_\_ ( ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor

.2 \_\_\_\_\_ ( ) visits to the site by the Architect during construction

(Paragraphs deleted)

.3 \_\_\_\_\_ ( ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents

.4 \_\_\_\_\_ ( ) inspections for any portion of the Work to determine final completion.

#### § 4.2.3

(Paragraphs deleted)

Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.4 If the services covered by this Agreement have not been completed within \_\_\_\_\_ ( ) months of the date of this Agreement, through no fault of the Architect or any of the Architect Parties, extension of the Architect's services beyond that time, which results in an increase in costs to the Architect, shall be compensated as Additional Services, subject to Section 4.2.1.

(Paragraph deleted)

#### ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 If reasonably required for the Project, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner also may designate other representatives who are authorized to act on the Owner's behalf with respect to the Project, and may modify or revoke the authority of any such representatives in writing. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 If reasonably required for the Project, the Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 If reasonably required for the Project, the Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall provide any services designated as the Owner's responsibility in Section 4.1.1.

§ 5.7 Intentionally omitted.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project, and obtains the Owner's authorization in accordance with Section 4.2.1. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by Laws or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials. The Architect shall notify the Owner of any tests, inspections and reports that are required, or that are advisable in the opinion of the Architect.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner or the Architect shall provide prompt written notice to the other party if either of them becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Notwithstanding the foregoing, the Owner may

communicate directly with such third parties orally or in writing, but shall inform the Architect of any oral communications and copy the Architect on any written communications.

**§ 5.13** Before executing the Contract for Construction, the Owner shall endeavor to coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. Upon the Architect's request, the Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

**§ 5.14** The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

**§ 5.15** Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

## **ARTICLE 6 COST OF THE WORK**

**§ 6.1** For purposes of this Agreement, the Cost of the Work shall be the total cost paid by the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

**§ 6.2** The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and any estimates of the Cost of the Work represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

**§ 6.3** In preparing any estimates of the Cost of Work, the Architect shall be permitted, subject to the Owner's review and approval, to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. Any estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques.

**§ 6.4** If, through no fault of the Architect or any of the Architect Parties, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

**§ 6.5** If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

**§ 6.6** If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall, at its sole option and discretion:

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

## ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Instruments of Service are the Drawings, Specifications and other documents and representations, including those in digital or electronic form, prepared by the Architect and the Architect's consultants to describe and define the Work. The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect and the Architect's consultants shall initially be deemed the authors and owners of their respective Instruments of Service, and shall hold all common law, statutory and other reserved rights, including copyrights. Upon issuance to the Owner of the final Certificate for Payment, or any termination of this Agreement or termination with respect to a particular Project (other than a termination by the Architect under Section 9.4 of this Agreement), ownership of the Instruments of Service, with all common law, statutory and other reserved rights, including copyrights, shall vest in the Owner. Notwithstanding the foregoing, the Architect and the Architect's consultants shall retain (i) an irrevocable nonexclusive and royalty-free license to use, reproduce and distribute all or any portions of the Instruments of Service solely for purposes related to the Project and purposes related to archival records and marketing materials, subject to Section 10.7, and (ii) the right to use and reproduce the individual standard features, staple building components and other functionally-required elements of the Instruments of Service that (a) are not original to, or developed uniquely or specifically for, the Owner; and (b) do not describe or define original design elements of the Project, including standard elements of the Architect's Specifications. It is the parties' understanding and intent that subsection (ii) of the foregoing sentence shall be narrowly construed, and is intended only to alleviate the possibility of inadvertent breach of this Agreement arising from use of routine, reusable design elements by the Architect. To the full extent allowed by Law, the Architect shall indemnify and hold harmless the Owner from and against claims, damages, losses and expenses, including reasonable attorneys' fees and expenses, arising out of or resulting from any use, reproduction or distribution of all or any portions of the Instruments of Service by the Architect or the Architect's consultants that violates this Article 7. The Architect shall obtain from its consultants all rights in the Instruments of Service necessary to comply with this Article 7. Submission or distribution of Instruments of Service to meet official regulatory requirements, financing requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Owner, the Architect or the Architect's consultants.

§ 7.3 Upon signing of this Agreement, and until ownership of the Instruments of Service has vested in the Owner in accordance with Section 7.2, the Architect grants to the Owner a nonexclusive, royalty-free license to use, reproduce and distribute the Architect's Instruments of Service for purposes of constructing, marketing, promoting, leasing, selling, operating, managing, using, maintaining, altering and adding to any or all portions of the Project, provided that the Owner substantially performs its obligations under this Agreement, including timely payment of all sums when due under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this Section 7.3 also permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to use reproduce and distribute all or any portions of the Instruments of Service solely and exclusively for performing services or construction for the Project. If the Architect rightfully terminates this Agreement, or rightfully terminates this Agreement with respect to a particular Project, for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate; otherwise, ownership of the Instruments of Service shall vest in the Owner, and the Architect and the Architect's consultants shall retain a license in the Instruments of Service, all in accordance with Section 7.2, and the Architect shall cooperate with, and provide any information reasonably requested by, the Owner in connection with completion of the Project.



**§ 7.3.1** In the event the Owner uses the Instruments of Service on another project after ownership of the Instruments of Service has vested in the Owner under Section 7.2, without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all Claims and causes of action arising from such uses. The Owner, to the extent permitted by Laws, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service on another Project after ownership of the Instruments of Service has vested in the Owner under Section 7.2. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

**§ 7.4** Except for the transfer of ownership and the licenses granted in this Article 7, no other license or intellectual property right in the Instruments of Service shall be deemed granted or implied under this Agreement. Neither the Architect nor the Owner shall assign, delegate, sublicense, pledge or otherwise transfer any license granted in this Article 7 to another party without the prior written agreement of the other party, except the Owner may assign any license and other rights or interests granted in this Article 7 to a buyer or grantee of all or part of the Project, to an entity affiliated with the Owner or to a lender. Any unauthorized use of the Instruments of Service by the Owner shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

**§ 7.5** After ownership of the Instruments of Service has vested in the Owner under Section 7.2, the Owner may authorize other similarly credentialed design professionals to reproduce and make changes, corrections or additions to the Instruments of Service to the extent allowed by Law.

## **ARTICLE 8 CLAIMS AND DISPUTES**

### **§ 8.1 General**

**§ 8.1.1** The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable Laws, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

**§ 8.1.2** To the extent damages are reimbursed or paid for by property insurance, and to the extent this waiver will not invalidate or adversely affect insurance coverage, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

**§ 8.1.3** Intentionally omitted.

### **§ 8.2 Mediation**

**§ 8.2.1** Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect or the Owner may proceed in accordance with applicable Laws to comply with the lien notice or filing deadlines, or to defend against or obtain the discharge of such lien, prior to or during resolution of the matter by mediation or by binding dispute resolution.

**§ 8.2.2** The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. The Owner and Architect shall include a similar mediation provision

in all agreements with contractors and consultants retained for the Project, thereby providing for mediation among and between all other persons and entities performing any portion of the services to be provided under this Agreement or the Work on the Project.

**§ 8.2.3** The parties shall share the mediator's fee and any mediation filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**§ 8.2.4** If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:  
(Check the appropriate box.)

- ☐ Arbitration pursuant to Section 8.3 of this Agreement
- ☒ Litigation in a court of competent jurisdiction in the county where the Project is located, the parties agreeing that such court shall be the exclusive venue and jurisdiction for disputes arising under the Agreement.
- ☐ Other: (Specify)

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

**§ 8.3** Intentionally omitted.  
(Paragraphs deleted)

**§ 8.4** The provisions of this Article 8 shall survive the termination of this Agreement.

## **ARTICLE 9 TERMINATION OR SUSPENSION**

**§ 9.1** If the Owner fails to make payments to the Architect in accordance with this Agreement for reasons other than the fault of the Architect or any of the Architect Parties, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give 14 days' written notice to the Owner before suspending services (which period shall constitute an opportunity to cure). In the event of a suspension of services under this Section 9.1, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred because of the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

**§ 9.2** If the Owner suspends the Project for reasons other than the fault of the Architect or any of the Architect Parties, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred because of the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

**§ 9.3** If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving the Owner not less than seven days' written notice.

**§ 9.4** Either party may terminate this Agreement, or may terminate this Agreement with respect to a particular Project, upon not less than seven days' written notice (which period shall constitute an opportunity to cure) should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. Following a termination by the Owner under this Section 9.4, if a court of competent jurisdiction determines that the Architect did not fail to substantially perform in accordance with the terms of this Agreement, then such termination shall be deemed a termination for convenience under Section 9.5.

§ 9.5 The Owner may suspend the Architect's services or terminate this Agreement, and may suspend the Architect's services or terminate this Agreement with respect to a particular Project, upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement, or terminates this Agreement with respect to a particular Project, for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement, or terminates this Agreement with respect to a particular Project, pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination and Reimbursable Expenses incurred.

§ 9.7  
(Paragraphs deleted)  
Intentionally omitted.

§ 9.8 The Architect shall include provisions consistent with this Article 9 in all its agreements with its consultants.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement, or terminates this Agreement with respect to a particular Project, are set forth in Article 7 and Section 9.6.

#### ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the Laws of the place where the Project is located, excluding that jurisdiction's choice of law rules.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction except as otherwise provided herein. Unless the context clearly indicates otherwise, the disjunctive "or" shall include the conjunctive "and," and vice versa; the singular shall include the plural, and vice versa, and the use of the masculine, feminine or neuter gender shall include all other genders, as appropriate. Unless otherwise expressly stated, where reference is made in this Agreement to a particular Section or Article, the reference refers to the corresponding Section or Article in this Agreement.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a buyer or grantee of all or part of the Project, to an entity affiliated with the Owner or to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment; provided, however, that the Owner may provide a collateral assignment of this Agreement to a lender without its assuming the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 The Architect shall not specify or otherwise cause any hazardous or toxic substances, wastes or materials to be brought onto the Project site or incorporated into the Work, except in full compliance with applicable Law. If the Architect becomes aware of any suspected hazardous or toxic materials being brought onto or encountered at the Project site in violation of applicable Laws or any of the Contract Documents, the Architect shall promptly notify and consult with the Owner. Except as provided above or elsewhere in this Agreement or under Laws, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 If authorized in writing by the Owner, the Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. If so authorized, the Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by Laws, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any Laws, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by Laws, to give effect to the parties' intentions and purposes in executing the Agreement.

§ 10.10 Any written notice given under this Agreement shall be deemed duly served and received (1) immediately upon hand delivery to an officer of the intended recipient or to a representative identified in this Agreement; (2) three business days after depositing in the U.S. Mail to the applicable address provided in this Agreement, by registered, certified, or regular mail; and (3) one business day after depositing with a nationally recognized courier service that provides confirmation of delivery to the applicable address provided in this Agreement, by express or overnight delivery.

§ 10.11 All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the Owner and the Architect that logically should survive completion or termination of this Agreement shall survive completion or termination of the Architect's services under this Agreement.

§ 10.12 No action or failure to act by the Owner or Architect shall constitute a waiver of any right, remedy, obligation or duty afforded them under this Agreement or Law, nor shall such action or failure to act constitute approval of or acquiescence in any breach of contract or negligence of the other party, except as provided herein or specifically agreed in writing.

§ 10.13 This Agreement may be signed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute a complete document. Signatures to this Agreement transmitted by facsimile, electronic mail in Portable Document Format (PDF) or any other digital or electronic means intended to preserve the original graphic and pictorial appearance of a document shall have the same effect as original signatures.

## ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Articles 1, 2, and 3, the Owner shall compensate the Architect as follows:

- .1 Stipulated Sum  
(Insert amount)

**.2 Percentage Basis**  
*(Insert percentage value)*

( ) % of the Owner's actual Cost of the Work, as calculated in accordance with Sections 11.6 and 11.6.1.

**.3 Other**  
*(Describe the method of compensation)*

**§ 11.2** For the Architect's Additional Services that the Owner has specifically requested herein, the Owner shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

The Owner and Architect shall agree on compensation for any Additional Services before they are provided.

**§ 11.3** For Additional Services that may arise during the course of the Project, and are authorized by the Owner under Section 4.2.1, the Owner shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation.)*

The Owner and Architect shall agree on compensation for any Additional Services before they are provided.

**§ 11.4** Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be as follows:

*(Insert amount of, or basis for computing, Architect's consultants' compensation for Additional Services.)*

The Owner and Architect shall agree on compensation for any Additional Services before they are provided.

**§ 11.5** When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	percent (	%)
Design Development Phase	percent (	%)
Construction Documents Phase	percent (	%)
Procurement Phase	percent (	%)
Construction Phase	percent (	%)
Total Basic Compensation	one hundred percent (	100 %)

**§ 11.6** When compensation for Basic Services is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work that has been approved by the Owner. Compensation paid in previous progress payments shall be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work and on the actual Cost of the Work, such that the Architect's total final compensation equals the amount set forth in Section 11.1.2.

**§ 11.6.1** When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced. The Architect is not entitled to compensation for services not performed.

§ 11.7 To the extent they become applicable, the hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates may be adjusted no more than once annually in accordance with the Architect's and Architect's consultants' normal review practices.  
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

**Employee or Category**

**Rate (\$0.00)**

**§ 11.8 Compensation for Reimbursable Expenses**

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- .12 Other similar Project-related expenditures, if authorized in advance by the Owner in writing.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the reasonable expenses incurred by the Architect and the Architect's consultants plus zero percent (0%) of the expenses incurred. The total compensation paid by the Owner for Reimbursable Expenses shall not exceed \$ \_\_\_\_\_, in the aggregate for the Project, without the Owner's prior written consent.

**§ 11.9 Architect's Insurance.** If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

*(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)*

N/A

**§ 11.10 Payments to the Architect**

**§ 11.10.1 Initial Payments**

§ 11.10.1.1 Intentionally omitted.

§ 11.10.1.2 Intentionally omitted.

**§ 11.10.2 Progress Payments**

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid sixty (60) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

*(Insert rate of monthly or annual interest agreed upon.)*

Prime Rate plus one percent (1%) per annum, but not to exceed the maximum rate allowed by Law, with the Prime Rate for any given month being as published on the first publication day of the same month in the "Money Rates" section of the Wall Street Journal.

**§ 11.10.2.2** The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or is otherwise responsible for those amounts.

**§ 11.10.2.3** Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

**§ 11.10.2.4** Upon the Owner's reasonable request, the Architect shall provide interim and final releases of liens, including interim and final releases of liens from the Architect Parties, and evidence of payment to the Architect Parties, as a condition precedent to any payment to the Architect becoming due under this Agreement.

## **ARTICLE 12 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Agreement are as follows:  
(Include other terms and conditions applicable to this Agreement.)

### **§ 12.1 Individually Identifiable Health Information**

The Architect shall comply with all applicable federal and state laws and regulations regarding the confidential and secure treatment of individually identifiable health information of patients ("PHI"). The Architect shall refrain from intentionally accessing PHI, and to the extent that the Architect may come into contact with PHI inadvertently in the context of performing hereunder, the Architect agrees that it: (a) shall keep such incidentally accessed PHI confidential and not disclose it to any third party (other than Contractors, agents or employees of the Owner for purposes related to performance hereunder) unless required to do so by Law; (b) shall only use PHI to the extent necessary to perform under this Agreement; (c) shall not intentionally access PHI; and (d) shall not remove any PHI from a facility of the Owner except and only to the extent necessary to perform under this Agreement (collectively, the "Confidentiality Requirements"). In addition, the Architect shall obtain written agreement from its consultants, agents and employees who, as part of their responsibilities, are required to be in any facility of the Owner on a recurrent basis and may thereby inadvertently come into contact with PHI, to comply with the Confidentiality Requirements and otherwise adhere to the applicable terms of this Agreement.

### **§ 12.2 Regulatory Compliance**

The parties enter into this Agreement with the intent of conducting their relationship in full compliance with the Law, including the Medicare/Medicaid Anti-fraud and Abuse Amendments and federal and state physician self-referral laws. Notwithstanding any unanticipated effect of any of the provisions herein, neither party will intentionally conduct itself under the terms of this Agreement in a manner to constitute a violation of these provisions. The Architect represents that it is not owned, directly or indirectly, by a physician or an immediate family member of a physician. For purposes of this section, "physician" means a doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor. For purposes of this section, an "immediate family member" means a husband or wife; birth or adoptive parent, child, or sibling; stepparent, stepchild, stepbrother, or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild; and spouse of a grandparent or grandchild.

### **§ 12.3 Access to Books and Records**

Upon the written request of the Secretary of the Department of Health and Human Services or the Comptroller General of the United States or any of their duly authorized representatives, the Architect will make available those contracts, books, documents and records necessary to verify the nature and extent of the costs of providing goods and services under this Agreement. Such inspection shall be available up to four (4) years after the rendering of such goods and services. If the Architect carries out any of the duties of this Agreement through a subcontract with a value of \$10,000 or more over a twelve (12) month period with a related individual or organization, the Architect agrees to include this requirement in any such subcontract. Nothing in the foregoing sentence shall be construed to permit the Architect to enter any such subcontract unless otherwise permitted under this Agreement. This section is included pursuant to and is governed by the requirements of Public Law 96-499, Sec. 952 (Sec. 1861(v)(1)(I) of the Social Security Act) and the

regulations promulgated thereunder. No attorney-client, accountant-client or other legal privilege will be deemed to have been waived by the Owner or the Architect by virtue of this provision.

#### **§ 12.4 Compliance Program**

The Architect has received and read, understands and shall abide by the Owner's code of conduct, and will participate in all applicable training programs adopted under such program.

#### **§ 12.5 No Exclusion from Federal Health Care Programs**

The Architect represents to the Owner that neither the Architect nor any of the Architect's employees, owners, affiliates or consultants contracted by the Architect to render goods or services in connection with this Agreement (i) is currently excluded, debarred, or otherwise ineligible to participate in the federal health care programs as defined in 42 U.S. C. §1320a-7b(f) (the "Federal Health Care Programs"); (ii) has been convicted of a criminal offense related to the provision of health care items or services or excluded, debarred or otherwise declared ineligible to participate in the Federal Health Care Programs. The Architect further represents that it is not aware of any investigation or otherwise aware of any circumstances that could result in it or its employees, owners, affiliates or consultants being excluded from participation in the Federal Health Care Programs. This shall be an ongoing representation during the entire term of the Agreement. The Architect shall immediately notify the Owner of any change in the status of the representation set forth in this Section. Any breach of this Section shall give the Owner the right to terminate this Agreement immediately for cause pursuant to Section 9.4.

#### **§ 12.6 Impermissible Payments**

The Architect represents that, to the best of its knowledge, it has not paid during the last three years any consulting fees to any employee of the Owner or any other person affiliated with or engaged directly by the Owner that are related, directly or indirectly, to the procurement of the Architect's Work from the Owner. Also, the Architect will not knowingly pay during the term of this Agreement any such consulting fees to any employee of the Owner or any other person affiliated with or engaged directly by the Owner that are related, directly or indirectly, to the Architect's Work for the Owner. The term "consulting fees" shall not include (1) salaries or bonuses paid by the Architect to its regulator or full time officers and employees related, directly or indirectly, to the Architect's Work for the Owner, (2) fees paid to investment bankers related to the performance of investment banking services for the Architect, (3) professional fees paid to lawyers, engineers, financial counselors, scheduling service companies and accounting firms as long as (a) any such payee is in the business of offering its services publicly to architects other than the Architect, (b) the fees paid are appropriate to the services performed for the Architect, and (c) the amount of fees paid is not dependent on the volume of work performed by the Architect, for the Owner, and (4) fees paid to other business entities, as long as payment of such fees is not approved in advance by the Owner's designee.

The Architect agrees to insert the following provisions in each of its contracts with consultants (as used herein, "the Consultant") relating to services to be performed for the Owner or the Owner's affiliates where the consultant's work for the Architect is awarded without competitive bidding:

- .1 The Consultant represents that, to the best of its knowledge, it has not made, directly or indirectly, during the last three years, and will not knowingly make during the term of this Agreement, any bribes, kickbacks or other impermissible payments to any employees of the Owner in respect to receiving work from the Architect related to projects for the Owner or its affiliates. Also, during the last three years, the Consultant has not knowingly received, and in the future will not solicit or knowingly receive during the term of the Agreement, any such payments from vendors, suppliers or other persons contracting with the Consultant in respect of the Consultant's work for the Architect related to projects for the Owner or its affiliates. The term "impermissible payments" shall include, without limitation, the investment by the Consultant, or any employees of the Consultant, in business ventures in which any such investment is disclosed to, and approved in advance by, the Owner's general counsel, provided that (x) investments in corporations that are traded on a national securities exchange or on the over-the-counter market and (v) investments in securities (including real estate securities) offered by persons in the business of syndicating securities shall not be deemed to be "impermissible payments."
- .2 The Consultant represents that, to the best of its knowledge, it has not paid during the last three years any consulting fees to any employee of the Owner or any other person, that are related, directly or indirectly, to the Consultant's work for the Architect related to projects for the Owner or its affiliates. Also, the Consultant states that it will not knowingly pay during the term of this Agreement any such consulting fees to any employee of the Owner or any other person, that are related, directly or



indirectly, to the Consultant's work for the Architect related to projects for the Owner or its affiliates. The term "consulting fees" shall not include (1) salaries or bonuses paid by the Consultant to its regulatory or full time officers and employees related, directly or indirectly, to the Consultant's performance of services for the Architect related to projects for the Owner or its affiliates, (2) fees paid to investment bankers related to the performance of investment banking services for the Consultant, (3) professional fees paid to lawyers, engineers, financial counselors, scheduling service companies and accounting firms as long as (a) any such payee is in the business of offering its services publicly to consultants other than the Consultant, (b) the fees paid are appropriate to the services performed for the Consultant, and (c) the amount of fees paid is not dependent on the volume of work performed by the Consultant for the Architect related to projects for the Owner or its affiliates, and (4) fees paid to other business entities, as long as payment of such fees is not approved in advance by the Owner's designee.

## ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations and agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B101™–2017, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

*(Insert the date of the E203-2013 incorporated into this agreement.)*

E203™–2013, Building Information Modeling and Digital Data Exhibit, is not applicable.

- .3 Exhibits:  
*(Check the appropriate box for any exhibits incorporated into this Agreement.)*

☐ AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:  
*(Insert the date of the E204-2017 incorporated into this agreement.)*

AIA Document E204™–2017, Digital Data Protocol Exhibit, is not applicable.

☐ Other Exhibits incorporated into this Agreement:  
*(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)*

- .4 Other documents:  
*(List other documents, if any, forming part of the Agreement.)*

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

Wellmont Health System  
d/b/a Lonesome Pine Hospital

By:  
Title:

*(Printed name and title)*

ARCHITECT (Signature)

By:  
Title:

*(Printed name, title, and license number, if required)*

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# Additions and Deletions Report for AIA® Document B101® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:38:17 CT on 01/09/2024.

## PAGE 1

**AGREEMENT** made as of the \_\_\_\_ day of \_\_\_\_\_ in the year Two Thousand Twenty-Four

...

Wellmont Health System  
d/b/a Lonesome Pine Hospital  
1990 Holton Avenue E.  
Big Stone Gap, VA 24219

...

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

...

Lonesome Pine Hospital Outpatient Center  
1990 Holton Avenue E.  
Big Stone Gap, VA 24219

Design and construction administration of interior renovations for new outpatient center, including Physical Therapy, Primary Care, Spine & Rehab and Sport Medicine, with all required support spaces.

## PAGE 2

### 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

## PAGE 3

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§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™ 2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204 2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204 2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective. Intentionally omitted.

...

Brent Fugate  
Ballad Health  
108 Woodlawn Dr.  
Johnson City, TN 37604  
Phone: (423) 431-7782  
Email: Brent.Fugate@Balladhealth.org

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**PAGE 4**

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§ 1.1.11.2 Consultants retained under ~~Supplemental~~ Additional Services:

...

§ 1.2 The Owner and Architect may reasonably rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, ~~to accommodate if there are~~ material changes in the Initial Information.

§ 1.3 The parties ~~shall~~ may agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. ~~The parties will use AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.~~

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™ 2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees. Intentionally omitted.

...

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed or registered in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed or registered design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects and other applicable design professionals practicing in the same or similar locality under the same or similar circumstances. ~~circumstances, and who have experience on projects of a similar size, nature, schedule and budget.~~ The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of ~~the Project.~~ the Project, and in accordance with the schedule approved by the Owner pursuant to Section 3.1.3.

§ 2.2.1 The Architect shall be responsible for the acts and omissions of its agents, employees and consultants, and all other persons and entities providing services to the Project through or on behalf of the Architect, and all other persons and entities for which the Architect is responsible (collectively, the "Architect Parties").

§ 2.2.2 The Architect, the Architect Parties, their services and the Construction Documents shall comply with all applicable laws, statutes, codes, ordinances, rules, regulations, and lawful orders and requirements of public authorities, including those that relate to hazardous materials, accessibility for the physically challenged (including the Americans with Disabilities Act), privacy and protection of confidential information (collectively, "Laws").

§ 2.3 ~~The Architect shall identify a representative Architect's~~ representative identified in Section 1.1.10 is authorized to act on behalf of the Architect with respect to the Project. The Architect's representative shall not change unless approved by the Owner in writing.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project. The Architect shall not remove or replace any consultant or key personnel working on the Project, or assign them to other projects in a manner that adversely affects their ability to perform their duties on the Project, unless and until the Owner has approved such removal, replacement or assignment in writing. In the event any of the Architect Parties fails to properly perform or otherwise hinders or adversely affects the Project's progress, the Architect shall replace such person or entity as reasonably requested by the Owner in writing.

PAGE 5

§ 2.5.1 Commercial General Liability with policy limits of not less than (\$—) One Million Dollars (\$1,000,000) for each occurrence and (\$—) Two Million Dollars (\$2,000,000) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than (\$—) One Million Dollars (\$1,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

...

§ 2.5.5 Employers' Liability with policy limits not less than (\$—) each accident, (\$—) each employee, and (\$—) Five Hundred Thousand (\$500,000) each accident, Five Hundred Thousand (\$500,000) each employee, and Five Hundred Thousand (\$500,000) policy limit.

§ 2.5.6 Professional Liability covering the Architect's negligent acts, errors and omissions in the performance of professional services with policy limits of not less than (\$—) per claim and (\$—) in the aggregate, \_\_\_\_\_ Million Dollars (\$\_\_\_\_\_,000,000) per claim and \_\_\_\_\_ Million Dollars (\$\_\_\_\_\_,000,000) in the aggregate. If such insurance is written on a claims-made basis, the Architect shall maintain such insurance for at least five years after Substantial Completion of the Project and shall furnish the Owner with satisfactory evidence of such continuation of coverage prior to final payment and every year thereafter for five years.

§ 2.5.7 **Additional Insured Obligations.** To the fullest extent permitted by law, ~~Laws,~~ the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the ~~Owner as an additional insured~~ Owner, Mountain States Health Alliance and Ballard Health's additional insureds for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the ~~Owner's additional insureds'~~ insurance policies and shall apply to both ongoing and completed operations.

#### PAGE 6

§ 2.5.9 All services of the Architect's consultants shall be provided pursuant to written agreements with the Architect that specifically bind such consultants to the terms of this Agreement. Such agreements shall require the consultants to carry and maintain insurance coverage similar to the coverage described in this Section 2.5, with reasonably prudent limits and coverages in light of the services to be rendered. The Architect shall furnish the Owner with copies of such agreements at the Owner's request.

§ 2.6 To the full extent permitted by Laws, the Architect shall defend, indemnify and hold harmless the Owner, Mountain States Health Alliance and Ballard Health, and each of their officers and employees from and against claims, damages, losses, liabilities, expenses and judgments arising out of, related to or in connection with the Architect's services under this Agreement, including reasonable attorneys' fees and expenses incurred in defending those claims, but only to the extent caused by the negligent acts or omissions of the Architect or any of the Architect Parties.

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and Articles 1, 2, 3 and elsewhere in this Agreement as Basic Services, and include usual and customary structural, mechanical, plumbing and electrical engineering services. Services not set forth in this Article 3 are Supplemental or identified in this Agreement are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, services and the services of the Architect Parties, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services, and the services of the Architect Parties, with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to reasonably rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

...

§ 3.1.4 The Architect shall not be responsible for an Owner's written directive or substitution, or for the Owner's written acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to and comply with all applicable design requirements imposed by those authorities and entities.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the ~~Project~~. Project, shall prepare submittal documents and drawings required by the approval process of such authorities, and shall make such supplementary or clarifying submittals as required for the Owner to obtain final approvals and authorizations from such authorities.

§ 3.1.7 The Owner's written approval of the Schematic Design Documents, Design Development Documents, Construction Documents, any estimate of the Cost of the Work, or any other item or service provided by the Architect does not relieve or release the Architect of its obligations or duties, or waive any of the Owner's rights, under or arising out of this Agreement.

PAGE 7

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review ~~laws, codes, and regulations~~ and comply with Laws applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies or errors discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall ~~discuss~~ advise and consult with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

...

§ 3.2.5.1 The Architect shall ~~consider~~ advise and consult with the Owner regarding sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. ~~The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.~~

§ 3.2.5.2 The Architect shall ~~consider~~ advise and consult with the Owner regarding the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

...

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, take any action required under Section 6.5, and request the Owner's approval.

...

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, ~~mechanical~~ mechanical, plumbing and

electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

**PAGE 8**

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

...

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of ~~(1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions).~~ forms. The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

...

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, ~~take any action required under Section 6.5~~, Sections 6.5 and 6.6, and request the Owner's approval.

...

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding ~~and preparing~~ contracts for construction.

...

§ 3.5.2.1 ~~Bidding Documents~~ Documents, if applicable, shall consist of bidding requirements and proposed Contract Documents.

...

§ 3.5.3.1 ~~Proposal Documents~~ Documents, if applicable, shall consist of proposal requirements and proposed Contract Documents.

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§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™-2017, General Conditions of the Contract for Construction. ~~If the Owner and Contractor modify AIA Document A201-2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.~~

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract ~~Documents~~. Documents; provided however, the Architect shall comply with its obligations to observe the Work and report to the Owner known deviations from the Contract Documents and from the most recent approved construction schedule, and defects and deficiencies observed in the Work. The Architect shall be responsible for the Architect's and Architect Parties' negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.



§ 3.6.1.3 Subject to Section 4.2.4.2.1 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

...

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, to endeavor to protect the Owner against defects and deficiencies in the Work and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, and as otherwise known to the Architect, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. The Architect shall advise and obtain the consent of the Owner prior to rejecting any Work and prior to requiring any inspection or testing of the Work.

§ 3.6.2.3 The Architect shall interpret and ~~decide~~ advise the Owner or Contractor, as applicable, about matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations ~~and decisions~~ of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. ~~When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions~~ The Architect's interpretations on matters relating to aesthetic effect shall be final if consistent with the Owner's approvals and the intent expressed in the Contract Documents.

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§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall timely issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

...

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate timely and action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means,

methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall ~~specify~~ specify, and be responsible for the adequacy of, the appropriate performance and design criteria that such services must ~~satisfy~~. ~~The Architect shall satisfy, and shall include in the Construction Documents a list of any such professional design services and certifications that are required.~~ The Architect shall timely review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, ~~4.2.1~~, the Architect shall timely review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

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§ 3.6.5.1 The Architect ~~may~~ may, after consulting with the Owner, order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. ~~Subject to Section 4.2, If requested by the Owner, the Architect shall~~ timely prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. Each Change Order and Construction Change Directive shall clearly define the change in the Work and be accompanied by sufficient documentation to support any adjustments in the Contract Sum or Contract Time.

...

- .3 forward to the Owner, for the Owner's review and records, written ~~warranties~~ warranties, guarantees, manuals and related documents required by the Contract Documents and received from the Contractor; and,

...

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner (at the Owner's discretion) to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected. The Architect shall notify the Owner in advance of all such inspections, and the Owner or its designated representative shall have the right to participate in such inspections.

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### ARTICLE 4 ~~SUPPLEMENTAL AND ADDITIONAL SERVICES~~

#### ARTICLE 4 ADDITIONAL SERVICES

##### § 4.1 ~~Supplemental~~ Additional Services

§ 4.1.1 The services listed below are ~~not included in Basic Services but may be required for the Project.~~ The Architect shall provide the listed Supplemental Services included in Basic Services if identified as the Architect's responsibility. The Architect shall provide such services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2, part of the Architect's Basic Services. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed ~~Supplemental~~ Additional Service is not being provided for the Project.

...

Supplemental <del>Additional</del> Services	Responsibility (Architect, Owner, or not provided)
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**§ 4.1.2** Description of Supplemental Services ~~Notwithstanding any of the provisions of this Agreement, the Architect shall not be entitled to compensation or an extension of time for any services required due to the negligence or breach of contract of the Architect or any of the Architect Parties.~~

**§ 4.1.2.1** A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

*(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)*

**§ 4.1.2.2** A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

*(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)*

**§ 4.1.3** If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™ 2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

**§ 4.2.1** Upon recognizing the need to perform the following Prior to providing any services the Architect believes are Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 — Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 — Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 — Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 — Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 — Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 — Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 — Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 — Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 — Evaluation of the qualifications of entities providing bids or proposals;

~~.10— Consultation concerning replacement of Work resulting from fire or other cause during construction;  
or,~~

~~.11— Assistance to the Initial Decision Maker, if other than the Architect, of such belief in writing and provide a proposed schedule for, and an estimate of, or proposal for, the additional fees and expenses to be incurred as a result of, such services. After receipt of such notice and information, if the Owner authorizes such services as Additional Services in writing, the Architect shall provide such Additional Services in accordance with the terms and conditions of such authorization and this Agreement. Except for services required due to the negligence or breach of contract of the Architect or any of the Architect Parties, any Additional Services authorized in writing and provided in accordance with this Section 4.2.1 shall entitle the Architect to compensation pursuant to Section 11.3, or as otherwise agreed in writing, and any agreed adjustment in the Architect's schedule. The Owner shall have no obligation to pay additional compensation or expenses associated with any such services unless such services are authorized by the Owner in writing pursuant to this Section 4.2.1.~~

**§ 4.2.2** ~~To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice. The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services, subject to Section 4.2.1. When the limits below are reached, the Architect shall notify the Owner:~~

- ~~.1 ( ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor~~
- ~~.2 ( ) visits to the site by the Architect during construction~~
- ~~.1— Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;~~
- ~~.2— Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;~~
- ~~.3— Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service; 3 ( ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents~~
- ~~.4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,~~
- ~~.5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom. ( ) inspections for any portion of the Work to determine final completion.~~

**§ 4.2.3** ~~The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:~~

- ~~.1 ( ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor~~
- ~~.2 ( ) visits to the site by the Architect during construction~~
- ~~.3 ( ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents~~
- ~~.4 ( ) inspections for any portion of the Work to determine final completion. Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.~~

**§ 4.2.4** ~~Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services. If the services covered by this Agreement have not~~

been completed within       ( )       months of the date of this Agreement, through no fault of the Architect or any of the Architect Parties, extension of the Architect's services beyond that time, which results in an increase in costs to the Architect, shall be compensated as Additional Services, subject to Section 4.2.1.

~~§ 4.2.5 If the services covered by this Agreement have not been completed within ( ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.~~

~~§ 5.1 Unless otherwise provided for under this Agreement, If reasonably required for the Project, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.~~

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~~§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner also may designate other representatives who are authorized to act on the Owner's behalf with respect to the Project, and may modify or revoke the authority of any such representatives in writing. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.~~

~~§ 5.4 The If reasonably required for the Project, the Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.~~

~~§ 5.5 The If reasonably required for the Project, the Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.~~

~~§ 5.6 The Owner shall provide the Supplemental Services any services designated as the Owner's responsibility in Section 4.1.1.~~

~~§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement. Intentionally omitted.~~

~~§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. Project, and obtains the Owner's authorization in accordance with Section 4.2.1. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.~~

~~§ 5.9 The Owner shall furnish tests, inspections and reports required by law-Laws or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials. The Architect shall notify the Owner of any tests, inspections and reports that are required, or that are advisable in the opinion of the Architect.~~

...

§ 5.11 The Owner ~~or the Architect~~ shall provide prompt written notice to the Architect ~~if the Owner or other party if either of them~~ becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Notwithstanding the foregoing, the Owner may communicate directly with such third parties orally or in writing, but shall inform the Architect of any oral communications and copy the Architect on any written communications.

§ 5.13 Before executing the Contract for Construction, the Owner shall ~~endeavor to~~ coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. ~~The Upon the Architect's request, the~~ Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

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§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost ~~to paid by~~ the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the ~~preliminary estimate any estimates~~ of the Cost of the Work ~~and updated estimates of the Cost of the Work, prepared by the Architect,~~ represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing any estimates of the Cost of Work, the Architect shall be ~~permitted permitted, subject to the Owner's review and approval,~~ to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. ~~The Architect's Any estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.~~

§ 6.4 If, through no fault of the ~~Architect, Architect or any of the Architect Parties,~~ the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

...

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner ~~shall shall,~~ at its sole option and discretion:

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§ 7.1 The Instruments of Service are the Drawings, Specifications and other documents and representations, including those in digital or electronic form, prepared by the Architect and the Architect's consultants to describe and define the Work. The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the

transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

**§ 7.2** The Architect and the Architect's consultants shall initially be deemed the authors and owners of their respective Instruments of Service, ~~including the Drawings and Specifications, and shall retain and shall hold~~ all common law, statutory and other reserved rights, including copyrights. Upon issuance to the Owner of the final Certificate for Payment, or any termination of this Agreement or termination with respect to a particular Project (other than a termination by the Architect under Section 9.4 of this Agreement), ownership of the Instruments of Service, with all common law, statutory and other reserved rights, including copyrights, shall vest in the Owner. Notwithstanding the foregoing, the Architect and the Architect's consultants shall retain (i) an irrevocable nonexclusive and royalty-free license to use, reproduce and distribute all or any portions of the Instruments of Service solely for purposes related to the Project and purposes related to archival records and marketing materials, subject to Section 10.7, and (ii) the right to use and reproduce the individual standard features, staple building components and other functionally-required elements of the Instruments of Service that (a) are not original to, or developed uniquely or specifically for, the Owner; and (b) do not describe or define original design elements of the Project, including standard elements of the Architect's Specifications. It is the parties' understanding and intent that subsection (ii) of the foregoing sentence shall be narrowly construed, and is intended only to alleviate the possibility of inadvertent breach of this Agreement arising from use of routine, reusable design elements by the Architect. To the full extent allowed by Law, the Architect shall indemnify and hold harmless the Owner from and against claims, damages, losses and expenses, including reasonable attorneys' fees and expenses, arising out of or resulting from any use, reproduction or distribution of all or any portions of the Instruments of Service by the Architect or the Architect's consultants that violates this Article 7. The Architect shall obtain from its consultants all rights in the Instruments of Service necessary to comply with this Article 7. Submission or distribution of Instruments of Service to meet official regulatory requirements, financing requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and Owner, the Architect or the Architect's consultants.

**§ 7.3** ~~The~~ Upon signing of this Agreement, and until ownership of the Instruments of Service has vested in the Owner in accordance with Section 7.2, the Architect grants to the Owner a nonexclusive license to use nonexclusive, royalty-free license to use, reproduce and distribute the Architect's Instruments of Service solely and exclusively for purposes of constructing, marketing, promoting, leasing, selling, operating, managing, using, maintaining, altering and adding to any or all portions of the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11, timely payment of all sums when due under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section Section 7.3 also permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in use reproduce and distribute all or any portions of the Instruments of Service solely and exclusively for performing services or construction for the Project. If the Architect rightfully terminates this Agreement, or rightfully terminates this Agreement with respect to a particular Project, for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate shall terminate; otherwise, ownership of the Instruments of Service shall vest in the Owner, and the Architect and the Architect's consultants shall retain a license in the Instruments of Service, all in accordance with Section 7.2, and the Architect shall cooperate with, and provide any information reasonably requested by, the Owner in connection with completion of the Project.

**§ 7.3.1** ~~In the event the Owner uses the Instruments of Service without retaining the authors on another project after ownership of the Instruments of Service has vested in the Owner under Section 7.2, without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims Claims and causes of action arising from such uses. The Owner, to the extent permitted by law, Laws, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. on another Project after ownership of the Instruments of Service has vested in the Owner under Section 7.2. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.~~

**§ 7.4** Except for the transfer of ownership and the licenses granted in this Article 7, no other license or intellectual property right in the Instruments of Service shall be deemed granted or implied under this Agreement. ~~The Owner~~

~~shall not~~ Neither the Architect nor the Owner shall assign, delegate, sublicense, pledge or otherwise transfer any license granted ~~herein in this Article 7~~ to another party without the prior written agreement of the Architect. ~~of the other party, except the Owner may assign any license and other rights or interests granted in this Article 7 to a buyer or grantee of all or part of the Project, to an entity affiliated with the Owner or to a lender. Any unauthorized use of the Instruments of Service by the Owner shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.~~

~~§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement. After ownership of the Instruments of Service has vested in the Owner under Section 7.2, the Owner may authorize other similarly credentialed design professionals to reproduce and make changes, corrections or additions to the Instruments of Service to the extent allowed by Law.~~

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§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, Laws, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are ~~covered by property insurance, reimbursed or paid for by property insurance, and to the extent this waiver will not invalidate or adversely affect insurance coverage,~~ the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7. Intentionally omitted.

...

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect or the Owner may proceed in accordance with applicable law Laws to comply with the lien notice or filing ~~deadlines prior to deadlines, or to defend against or obtain the discharge of such lien, prior to or during~~ resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. The Owner and Architect shall include a similar mediation provision in all agreements with contractors and consultants retained for the Project, thereby providing for mediation among and between all other persons and entities performing any portion of the services to be provided under this Agreement or the Work on the Project.

§ 8.2.3 The parties shall share the mediator's fee and any mediation filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.



[ X ] Litigation in a court of competent jurisdiction in the county where the Project is located, the parties agreeing that such court shall be the exclusive venue and jurisdiction for disputes arising under the Agreement.

...

### § 8.3 Arbitration ~~Intentionally omitted.~~

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

### § 8.3.4 Consolidation or Joinder

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

...

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, Agreement for reasons other than the fault of the Architect or any of the Architect Parties, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven-14 days' written notice to the Owner before suspending ~~services~~, services (which period shall constitute an opportunity to cure). In the event of a suspension of ~~services~~, services under this Section 9.1, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in because of the

interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the ~~Project, Project~~ for reasons other than the fault of the Architect or any of the Architect Parties, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred ~~in~~ because of the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving the Owner not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement, or ~~may terminate this Agreement with respect to a particular Project~~, upon not less than seven days' written notice (which period shall constitute an opportunity to cure) should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. Following a termination by the Owner under this Section 9.4, if a court of competent jurisdiction determines that the Architect did not fail to substantially perform in accordance with the terms of this Agreement, then such termination shall be deemed a termination for convenience under Section 9.5.

§ 9.5 The Owner may suspend the Architect's services or terminate this Agreement, and may suspend the Architect's services or terminate this Agreement with respect to a particular Project, upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement, or ~~terminates this Agreement with respect to a particular Project~~, for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement, or ~~terminates this Agreement with respect to a particular Project~~, pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.termination and Reimbursable Expenses incurred.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

*(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)*

.1 — Termination Fee:

.2 — Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

Intentionally omitted.

§ 9.8 ~~Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.~~ The Architect shall include provisions consistent with this Article 9 in all its agreements with its consultants.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement, or ~~terminates this Agreement with respect to a particular Project~~, are set forth in Article 7 and Section 9.7.9.6.

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§ 10.1 This Agreement shall be governed by the ~~law~~ Laws of the place where the Project is located, excluding that jurisdiction's choice of law rules. ~~If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.~~

**§ 10.2** Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for ~~Construction~~. Construction except as otherwise provided herein. Unless the context clearly indicates otherwise, the disjunctive "or" shall include the conjunctive "and," and vice versa; the singular shall include the plural, and vice versa, and the use of the masculine, feminine or neuter gender shall include all other genders, as appropriate. Unless otherwise expressly stated, where reference is made in this Agreement to a particular Section or Article, the reference refers to the corresponding Section or Article in this Agreement.

**§ 10.3** The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a buyer or grantee of all or part of the Project, to an entity affiliated with the Owner or to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment; provided, however, that the Owner may provide a collateral assignment of this Agreement to a lender without its assuming the Owner's rights and obligations under this Agreement.

...

**§ 10.6** Unless otherwise required in this Agreement, The Architect shall not specify or otherwise cause any hazardous or toxic substances, wastes or materials to be brought onto the Project site or incorporated into the Work, except in full compliance with applicable Law. If the Architect becomes aware of any suspected hazardous or toxic materials being brought onto or encountered at the Project site in violation of applicable Laws or any of the Contract Documents, the Architect shall promptly notify and consult with the Owner. Except as provided above or elsewhere in this Agreement or under Laws, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

**§ 10.7** ~~The~~ If authorized in writing by the Owner, the Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The ~~If so authorized, the Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.~~ information. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

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**§ 10.8.1** The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by ~~law, Laws,~~ arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

**§ 10.9** The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any ~~law, Laws,~~ or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by ~~law, Laws,~~ to give effect to the parties' intentions and purposes in executing the Agreement.

**§ 10.10** Any written notice given under this Agreement shall be deemed duly served and received (1) immediately upon hand delivery to an officer of the intended recipient or to a representative identified in this Agreement; (2) three business days after depositing in the U.S. Mail to the applicable address provided in this Agreement, by registered, certified, or regular mail; and (3) one business day after depositing with a nationally recognized courier service that provides confirmation of delivery to the applicable address provided in this Agreement, by express or overnight delivery.

§ 10.11 All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the Owner and the Architect that logically should survive completion or termination of this Agreement shall survive completion or termination of the Architect's services under this Agreement.

§ 10.12 No action or failure to act by the Owner or Architect shall constitute a waiver of any right, remedy, obligation or duty afforded them under this Agreement or Law, nor shall such action or failure to act constitute approval of or acquiescence in any breach of contract or negligence of the other party, except as provided herein or specifically agreed in writing.

§ 10.13 This Agreement may be signed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute a complete document. Signatures to this Agreement transmitted by facsimile, electronic mail in Portable Document Format (PDF) or any other digital or electronic means intended to preserve the original graphic and pictorial appearance of a document shall have the same effect as original signatures.

...

§ 11.1 For the Architect's Basic Services described under ~~Article~~ Articles 1, 2, and 3, the Owner shall compensate the Architect as follows:

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( ) % of the Owner's ~~budget for the actual~~ Cost of the Work, as calculated in accordance with ~~Section 11.6~~ Sections 11.6 and 11.6.1.

...

§ 11.2 For the Architect's ~~Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3~~, Additional Services that the Owner has specifically requested herein, the Owner shall compensate the Architect as follows:

...

The Owner and Architect shall agree on compensation for any Additional Services before they are provided.

§ 11.3 For Additional Services that may arise during the course of the Project, ~~including those under Section 4.2, and are authorized by the Owner under Section 4.2.1~~, the Owner shall compensate the Architect as follows:

...

The Owner and Architect shall agree on compensation for any Additional Services before they are provided.

§ 11.4 Compensation for ~~Supplemental and~~ Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus ~~percent ( )~~, or as follows:  
(Insert amount of, or basis for computing, Architect's consultants' compensation for ~~Supplemental or~~ Additional Services.)

The Owner and Architect shall agree on compensation for any Additional Services before they are provided.

...

§ 11.6 When compensation ~~identified in Section 11.1 for Basic Services~~ is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the ~~Work~~. Work that has been approved by the Owner. Compensation paid in previous progress payments shall ~~not~~ be adjusted based on subsequent updates to the Owner's budget for the ~~Cost of the Work~~. the Cost of the Work and on the actual Cost of the Work, such that the Architect's total final compensation equals the amount set forth in Section 11.1.2.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced. The Architect is not entitled to compensation for services not performed.

§ 11.7 ~~The~~ To the extent they become applicable, the hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates ~~shall be adjusted~~ may be adjusted no more than once annually in accordance with the Architect's and Architect's consultants' normal review practices.

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§ 11.8.1 Reimbursable Expenses are in addition to compensation for ~~Basic, Supplemental, Basic~~ and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

...

- .12 Other similar Project-related ~~expenditures~~ expenditures, if authorized in advance by the Owner in writing.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the reasonable expenses incurred by the Architect and the Architect's consultants plus ~~percent (—%) of the expenses incurred~~ zero percent (0%) of the expenses incurred. The total compensation paid by the Owner for Reimbursable Expenses shall not exceed \$ \_\_\_\_\_, in the aggregate for the Project, without the Owner's prior written consent.

...

N/A

...

§ 11.10.1.1 ~~An initial payment of (\$ —) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.~~ Intentionally omitted.

§ 11.10.1.2 ~~If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of (\$ —) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.~~ Intentionally omitted.

...

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid ~~(—)~~ sixty (60) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

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%—Prime Rate plus one percent (1%) per annum, but not to exceed the maximum rate allowed by Law, with the Prime Rate for any given month being as published on the first publication day of the same month in the "Money Rates" section of the Wall Street Journal.

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or ~~has been found liable for the amounts in a binding dispute resolution proceeding~~ is otherwise responsible for those amounts.

**§ 11.10.2.3** Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

**§ 11.10.2.4** Upon the Owner's reasonable request, the Architect shall provide interim and final releases of liens, including interim and final releases of liens from the Architect Parties, and evidence of payment to the Architect Parties, as a condition precedent to any payment to the Architect becoming due under this Agreement.

...

#### **§ 12.1 Individually Identifiable Health Information**

The Architect shall comply with all applicable federal and state laws and regulations regarding the confidential and secure treatment of individually identifiable health information of patients ("PHI"). The Architect shall refrain from intentionally accessing PHI, and to the extent that the Architect may come into contact with PHI inadvertently in the context of performing hereunder, the Architect agrees that it: (a) shall keep such incidentally accessed PHI confidential and not disclose it to any third party (other than Contractors, agents or employees of the Owner for purposes related to performance hereunder) unless required to do so by Law; (b) shall only use PHI to the extent necessary to perform under this Agreement; (c) shall not intentionally access PHI; and (d) shall not remove any PHI from a facility of the Owner except and only to the extent necessary to perform under this Agreement (collectively, the "Confidentiality Requirements"). In addition, the Architect shall obtain written agreement from its consultants, agents and employees who, as part of their responsibilities, are required to be in any facility of the Owner on a recurrent basis and may thereby inadvertently come into contact with PHI, to comply with the Confidentiality Requirements and otherwise adhere to the applicable terms of this Agreement.

#### **§ 12.2 Regulatory Compliance**

The parties enter into this Agreement with the intent of conducting their relationship in full compliance with the Law, including the Medicare/Medicaid Anti-fraud and Abuse Amendments and federal and state physician self-referral laws. Notwithstanding any unanticipated effect of any of the provisions herein, neither party will intentionally conduct itself under the terms of this Agreement in a manner to constitute a violation of these provisions. The Architect represents that it is not owned, directly or indirectly, by a physician or an immediate family member of a physician. For purposes of this section, "physician" means a doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor. For purposes of this section, an "immediate family member" means a husband or wife; birth or adoptive parent, child, or sibling; stepparent, stepchild, stepbrother, or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild; and spouse of a grandparent or grandchild.

#### **§ 12.3 Access to Books and Records**

Upon the written request of the Secretary of the Department of Health and Human Services or the Comptroller General of the United States or any of their duly authorized representatives, the Architect will make available those contracts, books, documents and records necessary to verify the nature and extent of the costs of providing goods and services under this Agreement. Such inspection shall be available up to four (4) years after the rendering of such goods and services. If the Architect carries out any of the duties of this Agreement through a subcontract with a value of \$10,000 or more over a twelve (12) month period with a related individual or organization, the Architect agrees to include this requirement in any such subcontract. Nothing in the foregoing sentence shall be construed to permit the Architect to enter any such subcontract unless otherwise permitted under this Agreement. This section is included pursuant to and is governed by the requirements of Public Law 96-499, Sec. 952 (Sec. 1861(v)(1)(I) of the Social Security Act) and the regulations promulgated thereunder. No attorney-client, accountant-client or other legal privilege will be deemed to have been waived by the Owner or the Architect by virtue of this provision.

#### **§ 12.4 Compliance Program**

The Architect has received and read, understands and shall abide by the Owner's code of conduct, and will participate in all applicable training programs adopted under such program.

#### **§ 12.5 No Exclusion from Federal Health Care Programs**

The Architect represents to the Owner that neither the Architect nor any of the Architect's employees, owners, affiliates or consultants contracted by the Architect to render goods or services in connection with this Agreement (i) is currently excluded, debarred, or otherwise ineligible to participate in the federal health care programs as defined in 42 U.S. C. §1320a-7b(f) (the "Federal Health Care Programs"); (ii) has been convicted of a criminal offense related to the

provision of health care items or services or excluded, debarred or otherwise declared ineligible to participate in the Federal Health Care Programs. The Architect further represents that it is not aware of any investigation or otherwise aware of any circumstances that could result in it or its employees, owners, affiliates or consultants being excluded from participation in the Federal Health Care Programs. This shall be an ongoing representation during the entire term of the Agreement. The Architect shall immediately notify the Owner of any change in the status of the representation set forth in this Section. Any breach of this Section shall give the Owner the right to terminate this Agreement immediately for cause pursuant to Section 9.4.

## **§ 12.6 Impermissible Payments**

The Architect represents that, to the best of its knowledge, it has not paid during the last three years any consulting fees to any employee of the Owner or any other person affiliated with or engaged directly by the Owner that are related, directly or indirectly, to the procurement of the Architect's Work from the Owner. Also, the Architect will not knowingly pay during the term of this Agreement any such consulting fees to any employee of the Owner or any other person affiliated with or engaged directly by the Owner that are related, directly or indirectly, to the Architect's Work for the Owner. The term "consulting fees" shall not include (1) salaries or bonuses paid by the Architect to its regulator or full time officers and employees related, directly or indirectly, to the Architect's Work for the Owner, (2) fees paid to investment bankers related to the performance of investment banking services for the Architect, (3) professional fees paid to lawyers, engineers, financial counselors, scheduling service companies and accounting firms as long as (a) any such payee is in the business of offering its services publicly to architects other than the Architect, (b) the fees paid are appropriate to the services performed for the Architect, and (c) the amount of fees paid is not dependent on the volume of work performed by the Architect, for the Owner, and (4) fees paid to other business entities, as long as payment of such fees is not approved in advance by the Owner's designee.

The Architect agrees to insert the following provisions in each of its contracts with consultants (as used herein, "the Consultant") relating to services to be performed for the Owner or the Owner's affiliates where the consultant's work for the Architect is awarded without competitive bidding:

- .1 The Consultant represents that, to the best of its knowledge, it has not made, directly or indirectly, during the last three years, and will not knowingly make during the term of this Agreement, any bribes, kickbacks or other impermissible payments to any employees of the Owner in respect to receiving work from the Architect related to projects for the Owner or its affiliates. Also, during the last three years, the Consultant has not knowingly received, and in the future will not solicit or knowingly receive during the term of the Agreement, any such payments from vendors, suppliers or other persons contracting with the Consultant in respect of the Consultant's work for the Architect related to projects for the Owner or its affiliates. The term "impermissible payments" shall include, without limitation, the investment by the Consultant, or any employees of the Consultant, in business ventures in which any such investment is disclosed to, and approved in advance by, the Owner's general counsel, provided that (x) investments in corporations that are traded on a national securities exchange or on the over-the-counter market and (v) investments in securities (including real estate securities) offered by persons in the business of syndicating securities shall not be deemed to be "impermissible payments."
- .2 The Consultant represents that, to the best of its knowledge, it has not paid during the last three years any consulting fees to any employee of the Owner or any other person, that are related, directly or indirectly, to the Consultant's work for the Architect related to projects for the Owner or its affiliates. Also, the Consultant states that it will not knowingly pay during the term of this Agreement any such consulting fees to any employee of the Owner or any other person, that are related, directly or indirectly, to the Consultant's work for the Architect related to projects for the Owner or its affiliates. The term "consulting fees" shall not include (1) salaries or bonuses paid by the Consultant to its regulatory or full time officers and employees related, directly or indirectly, to the Consultant's performance of services for the Architect related to projects for the Owner or its affiliates, (2) fees paid to investment bankers related to the performance of investment banking services for the Consultant, (3) professional fees paid to lawyers, engineers, financial counselors, scheduling service companies and accounting firms as long as (a) any such payee is in the business of offering its services publicly to consultants other than the Consultant, (b) the fees paid are appropriate to the services performed for the Consultant, and (c) the amount of fees paid is not dependent on the volume of work performed by the Consultant for the Architect related to projects for the Owner or its affiliates, and (4) fees paid to other business entities, as long as payment of such fees is not approved in advance by the Owner's designee.

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or ~~or~~ and agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

...

E203™–2013, Building Information Modeling and Digital Data Exhibit, is not applicable.

...

AIA Document E204™–2017, Digital Data Protocol Exhibit, is not applicable.

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Wellmont Health System  
d/b/a Lonesome Pine Hospital

By:  
Title:

By:  
Title:



## ***Certification of Document's Authenticity***

***AIA® Document D401™ – 2003***

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:38:17 CT on 01/09/2024 under Order No. 3104238059 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ – 2017, Standard Form of Agreement Between Owner and Architect, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
*(Signed)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Dated)*